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January 29, 1998

VIA AIRBORNE EXPRESS

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 W. High Street, Room 530
Jefferson City, MO 65101

FILED
JAN 30 1998
MISSOURI
PUBLIC SERVICE COMMISSION

Subject: GTE MIDWEST INCORPORATED, INTRASTATE INTRALATA TOLL
SERVICES AGREEMENTS WITH SOUTHWESTERN BELL
TELEPHONE COMPANY AND UNITED TELEPHONE COMPANY OF
MISSOURI PURSUANT TO ORDER ISSUED IN CASE NO.
TC-96-439
CASE NO. TO-98-23

Dear Mr. Roberts:

Enclosed for filing are the original and fourteen (14) copies of the Reply of GTE Midwest Incorporated to MCI's Response to Motion to Dismiss in the above referenced case.

Thank you for your assistance in this matter.

Sincerely,


Tracy D. Pagliara ^{RZ}

TDP/RZ:sah
Enc.

c: D. Evans/C. Little - Jefferson City, MO

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

JAN 30 1998

MISSOURI
PUBLIC SERVICE COMMISSION

GTE MIDWEST INCORPORATED,)
INTRASTATE INTRALATA TOLL SERVICES)
AGREEMENTS WITH SOUTHWESTERN)
BELL TELEPHONE COMPANY AND UNITED)
TELEPHONE COMPANY OF MISSOURI)
PURSUANT TO ORDER ISSUED IN CASE)
NO. TC-96-439)

CASE NO. TO-98-23

REPLY OF GTE MIDWEST INCORPORATED
TO MCI'S RESPONSE TO MOTION TO DISMISS

COMES NOW, GTE Midwest Incorporated ("GTE") and files this Reply to MCI's Response to GTE's Motion to Dismiss the referenced case, stating as follows:

1. On August 26, 1997, Southwestern Bell Telephone Company ("SWBT") filed a Motion to Dismiss this case. MCI responded on September 5, 1997, opposing SWBT's Motion to Dismiss. On September 15, 1997, SWBT filed its Reply to MCI's Opposition to the Motion to Dismiss.

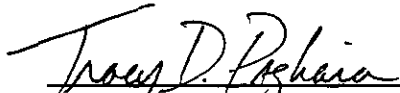
2. MCI's opposition to GTE's Motion to Dismiss is very similar to its opposition to SWBT's Motion to Dismiss. In Reply, GTE incorporates the Reply filed by SWBT, a copy of which is attached hereto. Although the Eighth Circuit vacated the FCC's Order requiring submission of pre-Telecommunications Act agreements, MCI clings to the hope that it can persuade the Commission to allow it as a competing carrier in a competitive environment to take advantage of the same terms entered into by GTE, SWBT or United with connecting carriers in a cooperative environment. These cooperative agreements

clearly have no relevance to the post-Telecommunications Act world. MCI's position is not supported by Missouri law or common sense.

WHEREFORE, GTE Midwest Incorporated respectfully requests the Commission to dismiss the referenced case.

Respectfully submitted,

GTE MIDWEST INCORPORATED


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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

GTE Midwest, Inc. Agreements with Southwestern Bell)	
Telephone Company and United Telephone Company)	Case No. TO-98-23
of Missouri.)	

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
REPLY TO OPPOSITIONS TO MOTION TO DISMISS**

Southwestern Bell Telephone Company respectfully submits this Reply to the oppositions to its Motion to Dismiss which were filed by MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. and the Staff of the Missouri Public Service Commission.

This docket was established as a result of GTE's submitting Primary Toll Carrier (PTC) agreements it has with Southwestern Bell and United Telephone Company of Missouri. These agreements were provided to the Commission to comply with the Federal Communication Commission's Order which gave it until June 30, 1997. This requirement, however, was struck down by the 8th Circuit Court of Appeals as beyond the FCC's jurisdiction.

On August 25, 1997, the Commission closed a similar docket it had opened for SS7 agreements Southwestern Bell had filed because no issue was presented for Commission determination as submitted. In its letter advising of this docket's closing, it indicated that the 8th Circuit's decision created a new uncertainty by leaving the Commission with the decision of which preexisting agreements must be approved and no independent decision has been taken in Missouri on this issue. The same circumstances exist here and warrant closing this docket.

Southwestern Bell does not believe Commission approval of these PTC agreements is necessary. As Commission Staff has correctly pointed out, the Commission has traditionally not

required such agreements to be filed with it. There is no reason for the Commission to depart from its prior practice.

In addition, there is nothing in the Telecommunications Act of 1996 which requires state Commission approval of these agreements. Section 252(a)(1) provides that interconnection agreements, whether negotiated before or after the date of enactment of the 1996 Act, are to be submitted to the state Commission for approval under Section 252(e). The requirement of Section 252(a)(1) is triggered only by "a request for interconnection, services, or network elements pursuant to Section 251." (emphasis supplied). Section 252(a)(1) of the Act was thus intended to be limited to interconnection negotiations under the Act. It was not intended to encompass the myriad of agreements between incumbent local exchange telephone companies which had been entered into long before the 1996 Act was ever conceived, much less enacted. The agreements between and among incumbent LECs are not subject to filing with or approval by the Commission since they were not executed pursuant to Section 251 of the 1996 Act.

Moreover, there is no requirement to file this agreement for approval because it is not an agreement between competing carriers. Section 251(c) concerns the requirements for interconnection from competing providers of local exchange services. Congress clearly recognized that authorization of local exchange competition requires the existence of interconnection agreements between the incumbent and new entrants serving a territory, and gave the state commissions the duty to review and approve these interconnection agreements.

The Act's legislative history provides further support that Section 251 applies to interconnection between competing providers of local exchange services. The Joint Explanatory Statement of the Committee of Conference (Joint Statement) states that "(t)he conference

agreement adopts a new model for interconnection that incorporates provisions from both the Senate bill and House amendment in a new Section 251 of the Communications Act.” (Joint Statement at 121). According to the House Amendment as discussed in the Joint Statement:

Section 242(a)(1) [the House precursor to Section 251] sets out the specific requirements of openness and accessibility that apply to LECs as competitors enter the local market and seek access to, and interconnection with, the incumbent’s network facilities.

and

Section 241(b)(1) describes the specific terms and conditions for interconnection, compensation, and equal access, which are integral to a competing provider seeking to offer local telephone services over its own facilities. (emphasis added.)

Section 252(a)(1) was thus intended to require Commission approval of interconnection agreements between competing local exchange telephone companies entered into in anticipation of or in reliance on the 1996 Act. The FCC reached this same conclusion when it stated that Section 251(c)(2) would require that only arrangements between competing carriers would be included.¹ At the time these agreements were negotiated, Missouri law effectively precluded basic local service competition. Southwestern Bell did not enter into negotiations with potential competing local exchange telephone companies in anticipation of passage of the 1996 Act, nor did Southwestern Bell receive any such request for local exchange interconnection.

The SS7 agreements are not interconnection agreements under the Federal Telecommunications Act of 1996. Rather, they are special agreements reflecting the terms under which Southwestern Bell and the other PTCs have been mandated to provide intraLATA toll

¹In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-96, p. 60 (Released April 19, 1996).

services to secondary carriers. But unlike other agreements Southwestern Bell had with other incumbent LECs, it was not able to unilaterally cancel or renegotiate the PTC agreements. As the Commission and MCI are aware, Southwestern Bell and the other PTCs have been actively seeking to be relieved of their PTC responsibilities by the Commission. In response to the changes caused by the Act of 1996, the Commission recently established a docket (Case Nos. TO-97-217/TO-97-220) to examine the PTC Plan and to determine whether it is appropriate to eliminate it or continue it in some other form. If MCI believes it has some right to take services under the PTC Plan or the PTC agreements, it, as an active participant in that docket, should raise those claims there.

WHEREFORE, Southwestern Bell respectfully requests the Commission to determine that review of these PTC agreements is unnecessary and dismiss this case.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document was mailed via Airborne Express to Dale Hardy Roberts, Secretary/Chief Regulatory Law Judge, Missouri Public Service Commission, 301 W. High Street, Room 530, Jefferson City, MO 65101 and was mailed, postage prepaid, this 29th day of January, 1998 to the following:


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TO-98-23